

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



HEALDSBURG AREA TEACHERS)	
ASSOCIATION, CTA/NEA,)	
)	Case No. SF-CE-1494
Charging Party,)	
)	Request for Reconsideration
v.)	PERB Decision No. 1033
)	
HEALDSBURG UNION ELEMENTARY)	PERB Decision No. 1033a
SCHOOL DISTRICT,)	
)	
Respondent.)	April 11, 1994
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Appearances: California Teachers Association by Ramon E. Romero, Attorney, for Healdsburg Area Teachers Association, CTA/NEA; Atkinson, Andelson, Loya, Ruud & Romo by Todd A. Goluba, Attorney, for Healdsburg Union Elementary School District.

Before Blair, Chair; Caffrey and Carlyle, Members.

DECISION

BLAIR, Chair: This case is before the Public Employment Relations Board (PERB or Board) on a request for reconsideration filed by the Healdsburg Union Elementary School District (District) of the Board's decision in Healdsburg Union Elementary School District (1994) PERB Decision No. 1033. In that decision the Board found that the District violated section 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA)¹ by

¹EERA is codified at Government Code section 3540 et seq. EERA section 3543.5 states, in pertinent part:

It shall be unlawful for a public school employer to do any of the following:

- (a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights

unilaterally requiring kindergarten teachers to supervise students for 15 minutes prior to the start of the instructional day.

DISCUSSION

PERB Regulation 32410(a)² states, in pertinent part:

The grounds for requesting reconsideration are limited to claims that the decision of the Board itself contains prejudicial errors of fact, or newly discovered evidence or law which was not previously available and could not have been discovered with the exercise of reasonable diligence.

In PERB Decision No. 1033, the Board concluded that the District unlawfully extended the workday when it added a morning supervision requirement to the teaching-related tasks performed by the kindergarten teachers prior to the beginning of the instructional day. In its request for reconsideration, the District contends that the decision contains prejudicial errors of fact because the District did not expressly require the kindergarten teachers to perform specific tasks each morning. Assuming that it had required employees to perform various tasks, the District argues that the decision contains no facts indicating that it was impossible for these tasks to have been

guaranteed by this chapter.

(b) Deny to employee organizations rights guaranteed to them by this chapter.

(c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.

²PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

performed at other times during the teachers' workday.

In its request for reconsideration, the District essentially reargues the evidence which was previously considered by the Board in the underlying decision. Kindergarten teachers Charlotte McGannon (McGannon) and Carol Novak (Novak) testified about the various teaching-related duties performed each morning before the instructional day began. These included tasks such as copying classroom materials, checking for messages, contacting parents and conferring with other teachers or the principal. McGannon and Novak also testified that it would be difficult or impossible to accomplish these responsibilities at other times of the day. For example, the instructional schedule of the kindergarten teachers differed from that of the first and second grade teachers making it difficult to contact them during the instructional day.

The District's arguments fail as there is no evidence in the record that the District rebutted McGannon and Novak's testimony that the new supervision assignment was in addition to the various tasks performed by the kindergarten teachers each morning. Nor did the District attempt to overcome the testimony that these duties could not be performed during the instructional workday. The record is simply devoid of any evidence which would overcome the testimony of McGannon and Novak.

ORDER

The District has not established that the Board's decision contains prejudicial errors of fact, or that there is newly

discovered law or evidence which would support reconsideration of the decision by the Board. Accordingly, the District's request for reconsideration in Case No. SF-CE-1494 is hereby DENIED.

Member Carlyle joined in this Decision.

Member Caffrey's concurrence begins on page 5.

CAFFREY, Member, concurring: While I continue to support the position stated in my concurrence and dissent in Healdsburg Union Elementary School District (1994) PERB Decision No. 1033, I believe that the Healdsburg Union Elementary School District's (District) request for reconsideration of that decision essentially represents a request to reargue the case. Therefore, I concur that the Public Employment Relations Board's standard for reconsideration of the decision has not been met and the District's request should be denied.